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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945.

No.....

BERNARD M. SHOTKIN, PETITIONER,

v.

JUDGES SUPERIOR COURT, ATLANTA CIRCUIT, wrongfully entitled State of Georgia, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI.

TO THE HONORABLE, THE SUPREME COURT OF THE UNITED STATES:

Petitioner, Bernard M. Shotkin, respectfully prays that a writ of certiorari issue to review a decision of the Court of Appeals of Georgia, and which the Supreme Court of Georgia refuses to review on the petitioner's application for writ of certiorari.

A. SUMMARY STATEMENT OF THE MATTER INVOLVED.

Here involved is the Ex-parte revocation and cancellation, without notice, without pleadings, without charge or accusation and without opportunity to be heard, of petitioner's license to practice law in the state of Georgia. Petitioner was thus deprived of valuable property without

due, or any, process of law and was not given the full protection and equality of the law.

A summary of the facts is as follows:

On July 10, 1944, petitioner was duly licensed to practice law in the State of Georgia (R. 9, 20). The license was issued to him after full compliance with all statutory requirements applicable thereto (R. 10). These statutory provisions, covering the entire matter of requirements for admission to practice, appear in Sections 9-101 to 9-115 inclusive, and are set forth in the Appendix to this petition and brief. The order granting the license, and ordering the clerk to issue same to petitioner was signed by the Hon. Paul S. Etheridge (since deceased) as Judge of the Superior Court, Atlanta Circuit (R. 9, 20). This order, and the license issued as so ordered, to petitioner, likewise appear in the Appendix. Photostats thereof appear in the record.

Note: (References to the Record are to the 120 photostatic pages of the certified record in the case below, Case No. 30945 in the Court of Appeals of Georgia, and to the 58 typewritten pages of the certified record on petition for certiorari to, and denied by, the Supreme Court of Georgia, all as lodged in the office of the Clerk of the Supreme Court of the United States on May 15, 1946, with request of petitioner for leave to submit without printing of the record. References to pages by number, are, unless otherwise noted, to said photostatic pages.)

Petitioner stood the bar examination on June 28, and on July 5, 1944, the examining board certified that he was entitled to be licensed to practice law (R. 10, 22). Upon presentation of this certificate to the Superior Court of Fulton County "making proper application for admission to the bar," as conceded by the Court of Appeals of Georgia, at the outset of its adverse decision (35 S. E. (2d), at pp. 557, 558), the order was signed by Judge Etheridge on July 10th, declaring that petitioner "is entitled to be duly licensed to practice law in this State," and ordering the clerk "to issue to him a license." (R. 20.)

While the Court of Appeals of Georgia, in its decision sought here to be reviewed, stated that this order was "contingent" upon petitioner complying with the "law in connection therewith," yet the order, signed by the Judge, recited no contingency or condition, but is unequivocal (R. 34). The "law" thus referred to is shown by previous reference in the decision to "the law in the Atlanta Circuit." As will be shown in the accompanying brief, any such "law in the Atlanta Circuit," which is other or different from the requirements for admission to the bar, and is different from requirements in every one of the many other circuits in the entire state of Georgia, as set forth in the Appendix, are of no force or effect; and the Supreme Court of Georgia has recently so held.

After he had begun the practice of law, petitioner, shortly after July 10, 1944, went on a trip to Denver, Colorado (R. 35), and during his absence, on August 14, 1944, Judge Etheridge entered an order, on ex parte application, without notice of any kind to petitioner, and without his knowledge, purporting to revoke his previous order of July 10th (R. 33). Petitioner was back in Georgia on August 30th, and having heard about this order revoking his license, conferred with Judge Etheridge, with the result that the Judge entered another order, on August 31st, which in turn revoked the order of August 14th, reciting quite properly, that such order "was improvidently passed because your petitioner had not been afforded an opportunity to be heard." (R. 36.) This order of August 31st, also very properly provided for a legal method, with due process, whereby there might be filed a motion or petition to cancel or revoke petitioner's license, with a rule nisi, as to which certain attorney named had agreed to accept service. (See decision in 35 S. E. (2d) at page 558). But on the very next day, and again without notice of any kind, this last order of August 31st was again revoked, and the entire matter referred to the six judges of the Fulton Superior Court, which body, on September 21, 1944, again without notice, process, pleading or any opportunity to petitioner

to be heard, entered an order which revoked the previous orders of July 10, August 14, and August 31, with leave to petitioner to apply to the court "for a hearing on his application for admission." (R. 37, 38.)

Petitioner then, claiming he already had been duly licensed and admitted to practice law, filed his complaint and notice to set aside the above order of September 21 (R. 7 to 40), in which petitioner alleged, as shown by his said petition and amendments thereto, and so stated by the decision of the Georgia Court of Appeals (35 S. E. (2d) at 559), that said order was issued without any notice or service on petitioner, and its provisions were thus illegal and void and violated his Constitutional rights under the due process clause (R. 2, 11, 12, 13, 14, 35, 39).

To this petition, as amended, the solicitor general of the Atlanta Circuit filed a demurrer, on the ground that the petition, as amended set forth no valid reasons why said order of September 21 should be set aside (R. 41). The issue thus formed—and the demurrer admitted all petitioner's averments of material facts to be true—was heard on May 18, 1945, and the Superior Court sustained the demurrer and dismissed the petition (R. 44).

In addition to the brief mention of facts in the decision sought to be reviewed, the petition, verified under oath, alleged inter alia that, as required by Georgia statutes, petitioner had filed, with his application (R. 8), a certificate from two practicing members of the bar of Georgia, under oath attesting his good moral character, and that they deemed him qualified for admission to the bar. Copy of this certificate appears as an Exhibit to the petition (R. 19). Petitioner further alleges that he had taken the Georgia bar examinations four times prior to July, 1944, and each time two different members of the bar under oath attested to his good moral character (R. 9). He further alleged in his amended petition that the order of August 14, as well as the order of September 21, and also the order of September 1, 1944, were all issued without any notice of any kind to him, and with no opportunity to be heard, and no hearing, and without notification of any charges; while petitioner was outside the state of Georgia, that local influence, prejudice and influence was exercised against petitioner, which inter-

fered with the fairness of defendant Judges of the Superior Court; that the order of July 10, 1944, and the license issued to him on that day, were without any conditions; denies (R. 35) that any fraud whatsoever was used by petitioner in his application for admission; that when the order of August 14 was entered he was 2000 miles away, in Denver with one of his children, who was sick; that he traveled 2000 miles to Atlanta (and then back again to Denver) to interview Judge Etheridge, and called his attention to the fact that no proceedings had been filed against him, no notice given him, and no charges made or filed, and no opportunity to be heard, all contrary to the law of the land and due process (R. 35), and hence the order of August 14 was null and void, and that thereupon Judge Etheridge, of his own volition, revoked said order of August 14, by his order of August 31st (R. 36), that his right and license to practice law in Georgia is a property right, and that the orders purporting to revoke or cancel his license, without charges, notice, hearing or opportunity to be heard, deprives him of his property without due process, in violation of the Constitution of the United States and of the State of Georgia.

All of these averments were conceded to be true by the demurrer.

The Georgia decision, at pages 559, 560 of 35 S E.. (2d) refers to Code Sections 24-3304, 24-3305 and 24-3306, Code of 1933 Supplement. **These code provisions are not statutes passed by the Georgia Legislature, or the General Assembly, but are merely rules, adopted by the Superior Court judges of the "Atlanta Circuit".** As will be noted in the accompanying brief, such rules having been held, by the Georgia Supreme Court, to be wholly invalid, in the case of *Jones v. Boykin,* 195 Ga. 606, decided in 1938. A printed page issued from the office of the Clerk of the Supreme Court of Georgia, after referring to the statutory provisions governing admission to the bar, which are printed in the Appendix, then contains the following statement:

> "As to rules adopted by the superior court judges, relative to admission of attorneys, see Ga. Code Am. Cumulative Pocket Part, §§ 24-3302 to 24-3317."

With reference to these rules appearing in said Cumulative Pocket Part, for 1943, Title 24, page 57, as 24-3302 to 3317, the Editors of that work (which is not presently here available to petitioner) state that these rules prescribing additional qualifications for admission to the bar were repealed by Acts 1937, pp. 464, 465.

Before filing his complaint against the Judges of the Superior Court of the Atlanta Circuit, your petitioner for months endeavored to secure the services of an attorney in Atlanta, Georgia, to represent him and when one attorney agreed to represent petitioner, he was immediately appointed Atlanta Assistant Solicitor and shortly thereafter another attorney agreed to represent the petitioner in his complaint and this attorney was appointed a member of the Grievance Committee of the Atlanta, Georgia Superior Court, and, therefore, these two attorneys could not represent the petitioner, and although petitioner pleaded with many other attorneys to represent him, they all refused on one pretext or another, telling your petitioner that he had received a raw deal from the Superior Court, but they could not represent him, and finally, one attorney frankly informed the petitioner that there was too much pressure and politics being used against him, and he was afraid to represent petitioner.

In fear of being sentenced to the Georgia Chain Gang without any due Process by the Atlanta Superior Court Judges if he continued in the practice of law, finally, in desperation, the petitioner filed pro se his aforesaid complaint against the six Superior Court Judges of Atlanta Circuit in the Superior Court of the Atlanta Circuit, and then *a miracle happened, for the Honorable Judge Edgar Watkins, the outstanding constitutional lawyer of the entire south, volunteered to represent your petitioner without any fee,* stating he was fulfilling his oath as an attorney and officer of the Courts of Georgia and was willing to represent the petitioner, because back of all these unconstitutional attempts to deprive your petitioner of his right to practice law was the influence of the Ku Klux Klan of Georgia who was spurred on by a former mayor of Atlanta, Georgia, and several other attorneys who were members of the Ku Klux Klan, and that Judge Paul Etheridge and Judge Hendricks

of this Atlanta Circuit Superior Court, were members of the Ku Klux Klan, and these two Judges were once indicted for graft, that the Ku Klux Klan influence was so strong in Georgia that they dominated the decisions of even the highest Courts in Georgia, and the Honorable Judge Edgar Watkins said that he would represent the petitioner in all the Courts of Georgia without any fee until he reached the United States Supreme Court where the petitioner would receive justice, despite all the influence that the Ku Klux Klan had with the political leaders of Georgia, that the Ku Klux Klan in Georgia were a very powerful anti-social force and their great political influence subjected to corruption all branches of the government of Georgia and the Klan created and fostered intolerance, and created hate, and Judge Edgar Watkins saw friend pitted against friend and neighbor against neighbor, because the Ku Klux Klan's influence was so powerful in Georgia that members of the Ku Klux Klan placed themselves above the law, and committed acts of violence and discrimination which shocked his sense of decency and the decency of most honest citizens.

B. OPINIONS BELOW.

Petitioner sued out writ of error from the Court of Appeals of Georgia to review the judgment of the Superior Court. Therein he alleged error in denial to petitioner of his constitutional right to due process, etc. (R. 2). The Georgia Court of Appeals affirmed (R. 72) on October 2, 1945, and denied petition for rehearing on October 30 (R. 115). Its decision set forth in the Record at pages 61 to 72, and is reported in 35 Southwestern Reports (2nd) page 556. Petitioner, in due time, filed his petition in the Supreme Court of Georgia to review the decision of the Georgia Court of Appeals, but said petition was denied, without opinion, on January 16, 1946 (R. 118). Petitioner filed petition for rehearing by the Supreme Court of Georgia on January 23, 1946, which was likewise denied, without opinion, on February 21, 1946 (R. Sup. Ct. of Georgia, p. 58). The decision of the Court of Appeals of Georgia is therefore the final decision, to review which petitioner prays that this Court grant its writ of certiorari.

C. JURISDICTION.

Jurisdiction is invoked under Judicial Code, Section 237, as amended by the Act of February 13, 1925, 43 Stat. 937, 28 U.S.C.A. Section 344.

This Court has jurisdiction to review the decision of the Court of Appeals of Georgia, because thereby petitioner was deprived of his property without due process of law, in violation of the right, specially set up and claimed by petitioner, under the Constitution of the United States, as set forth in the V and XIV Amendments, and which rights were specifically set up and claimed by petitioner in this case in his pleadings therein.

The following cases are believed to sustain the jurisdiction:

Ex Parte Garland, 71 U.S. 33, 18 L. Ed. 366;
Bradley v. Fisher, 80 U.S. 335, 20 L. Ed. 647, 652;
Essanay Film Co. v. Kane, 258 U.S. 358, 362; 66 Ed. 658;
Selling v. Radford, 243 U.S. 46, 51, 61 L. Ed. 585.

D. THE QUESTIONS PRESENTED.

1. Can the State of Georgia, or any judge, or all of the judges of the Fulton Superior Court, Atlanta Circuit, of Georgia, legally or lawfully revoke or cancel petitioner's license to practice law theretofore duly issued to him after full and complete compliance with all statutory requirements for admission to the bar, and do so without notice, without pleading, without hearing and without opportunity to be heard?

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2. Does not the procedure whereby the Superior Court of Fulton County, Georgia, revoked the license to practice law theretofore duly granted to the petitioner and revoking the order of court previously entered admitting him to practice, without notice, without pleading, without hearing and without an opportunity to be heard, deprive petitioner of a valuable property right, without due or any process of law?

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3. Whether or not the rulings of the Superior Court of Fulton County, Georgia, affirmed by the decision by the Georgia Court of Appeals, refusing to vacate the orders cancelling and revoking petitioner's license to practice and dismissing his petition and motion therefor, are erroneous and constitute a denial to petitioner of due process and equal protection of the law as guaranteed by the constitution of the United States, and Georgia.

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4. The questions as to the force and effect of the rules of the Superior Court judges are embodied in §§24-3304, 24-3305, 24-3306, of the Supplement to the Georgia Code *in view of the statutory provisions governing the matter of admission to the bar and the decision by the Supreme Court of Georgia denying power to the Superior Court judges to pass any rules governing qualifications for admission to the bar.*

5. Whether on August 31, 1944, when said Judge Paul Etheridge made, passed and entered an order setting aside and vacating the last above mentioned order of August 14, 1944, stating in this August 31st order that his order of August 13, 1944 was improvidently made by him, did this order of August 31, 1944 readjudicate the right of the petitioner to practice law in Georgia?

Whether or not the hereafter mentioned rulings of the Court of Appeals in refusing petitioner the following motions numbered 6 to 13, are erroneous and constitute a further denial to petitioner of due Process as guaranteed by the Constitution of the United States, thereby showing a predetermination of the Court of Appeals to render a final decision against petitioner, thereby making this Court Coram non Judice, and in effect wrought a dissolution of the court.

6. Whether the court was denied due Process of Law when shortly after the Honorable Judge Edgar Watkins, Sr., filed the bill of exceptions in the Court of Appeals, petitioner filed a petition to continue the case due to the illness of his counsel, Honorable Edgar Watkins, Sr., who was then in a hospital, which petition was overruled by the court?

7. Whether the court erred, when said petition for con-

tinuance contained an alternative prayer, should the court not grant the continuance, that the court appoint able counsel to represent petitioner, in view of the fact, that notwithstanding his ability and willingness to pay a proper fee, he had been unable to obtain other counsel to represent him on account of the influence of a small, prejudiced influential group, which prayer was also denied by the court.

8. Whether the court erred, when, upon the call of the case in the Court of Appeals, petitioner, appearing pro se, moved for a judgment in his favor on account of the tardiness of Assistant Solicitor General Pye in filing his brief, which was not filed within the time provided by the rules of said court, which motion was denied.

9. Whether the Court of Appeals further erred when they thereupon set a later date for the petitioner to argue his appeal, which date came about the time of the petitioner's Jewish Day of Atonement and New Years and the Court refused the petitioner's written motion that they set an earlier or later date for arguing his appeal, so that he could spend this High Holy Jewish Holiday with his sick child and family in Denver, Colorado, 2000 miles away from Atlanta, Georgia.

10. Whether the court erred when petitioner had heretofore sworn in his complaint that he was a United States citizen, and also in his bill of exceptions to the Court of Appeals, upon and during the argument in the Court of Appeals, one of the judges of said court whom petitioner thought was Judge MacIntyre, asked petitioner what his nationality was in such a manner that petitioner had to reply that he was Jewish and was born and raised in the United States and was a citizen thereof, whereupon petitioner moved to disqualify said judge and on September 5, 1945, filed his written motion to have said judge disqualified and to have another judge of the Court of Appeals sit on his case, and further moved that the entire Court of Appeals bench sit En Banc on said case according to new constitution of Georgia and pass upon the same, which motions were also denied by the court.

11. Whether the court erred when upon and during the argument in the Court of Appeals, due to the interjection

by the court of the question of petitioner's religious belief and his response thereto, and due to the time consumed thereby and in arguing his motion to recuse said judge and to have the entire court sit on his case, little and insufficient time remained for the argument of petitioner's brief for his case, and he therefore requested by motion 15 minutes time to argue same, which motion was denied.

12. Whether the court erred when during the argument in the Court of Appeals the court permitted Assistant Solicitor Pye to make villifying remarks in open court calling petitioner "swine" because petitioner argued he did not receive opposing Brief in time, which prevented petitioner from obtaining due process and the equal protection of the law, which petitioner says showed prejudice on the part of the court and that the proceedings became thereby coram non judice and in effect wrought a dissolution of the court.

13. Whether the court erred when petitioner further moved the court to add as defendants to the bill of exceptions as or the names of the six Superior Court judges who rendered the judgment revoking petitioner's right and license to practice law and to add their names to the title of this case, *same having been changed without petitioner's permission* as so originally entitled in petitioner's complaint in the Superior Court, which motion was denied.

14. Whether the judges of the Superior Court of Georgia and the Court of Appeals of Georgia can in defiance of the rights of citizens take away valuable rights of the petitioner to practice law without any semblance of compliance with law, and when this high-handed method is called in question, say that it is against the State of Georgia, and that they can successfully say that the State, and not they, did it, and, therefore, petitioner's complaint should be against the State of Georgia and not against the six judges as individuals.

15. Whether Georgia's masked and hooded Ku Klux Klan precursers of Hitlerism, who have spread the seeds of hatred and race discrimination, whose fungus growth of prejudice pervade and their insidious touch reach, and influence, sacred halls of Justice in Georgia will be permitted

to prevail and rob your petitioner of his property right—the right to practice Law, without notice, hearing, or opportunity to be heard.

E. REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

After trying many times to pass the bar examination for admission to the bar of Georgia, petitioner finally succeeded. *He complied with every statutory requirement* each time and finally he received his certificate that he had passed and was duly qualified. The court entered its order directing the license to issue and it was issued, then without due or any process, that order was cancelled and revoked and his license cancelled. This is a valuable property right to petitioner and a means of livelihood for himself and family.

As will be shown in the brief filed in support, the decision by the Court of Appeals of Georgia ignores and is in conflict with, prior rulings of the same Court of Appeals and in direct conflict with decisions by the Supreme Court of Georgia.

The Georgia Court of Appeals in its decision refers to the sections of the Code providing for a questionnaire, for reference of same to a Grievance Committee, a report by the Grievance Committee within thirty days "as to the moral character and fitness of the applicant" and that no one shall be admitted to the bar until the committee shall have made such report, *all as if they were statutory provisions of the State of Georgia. Such is not the case. These are merely rules passed by the Superior Court judges.* The decision in question ignores the decision by the Supreme Court of Georgia in *Jones v. Boykin,* 195 Ga. 606, 608; 196 S. E. 900, whereinall, the judges concurring, it was held that the Superior Court has no power to pass "rules governing the qualifications for admission to the bar in order to practice law in any court in this State." Said Georgia Supreme Court decision further held that the only power granted to the judges of the superior courts was to establish "uniform rules of practice throughout the several circuits" and that rules governing admission to the bar cannot be considered as

a rule of practice. Said Georgia Supreme Court decision, rendered March 8, 1938, specifically referred to and quotes the statute passed by the General Assembly of Georgia in Laws 1937 pages 464, 465, which statute provides that even as to rules of practice recommended by the judges of the superior courts, nevertheless such rules "shall not become operative and of force and effect until enacted into law by the General Assembly of Georgia." The decision in question by the Court of Appeals likewise ignores and was contrary to the decision by the Supreme Court of Georgia in which all judges concurred, rendered September 9, 1943, in the case of *Ex Parte Ross*, 196 Ga. 499, 502; 26 S.E. (2d) 880, which held that the statutory provisions regarding admission to the bar were controlling, referring to the statutes set forth in the Appendix; and likewise held therein that these valid provisions of the law designated by the Legislature "may not be set at naught by any actions of the court. They are not subject to alteration or nullification by any rule which may be adopted by the Supreme Court pursuant to the authority conveyed by the court, §9-114." **The said decision by the Supreme Court of Georgia further stated that the rule of the Supreme Court of Georgia "makes it the duty of the judge of the Superior Court, upon receipt of a certificate from the State Board to the effect that an applicant is entitled to practice law, to deliver to the applicant an order to the clerk of that court to issue to the applicant a license to practice law."**

The decision in question is therefore in direct conflict with the foregoing decisions by the Supreme Court of Georgia and also with the prior decision of the Court of Appeals as rendered in the case of *DeKrasner v. Boykins*, 54 Ga. App. 29, 37; 186 S.E. 701, wherein it was stated that "the right to practice law *after once admitted*, is to be considered a property right of which one is not to be deprived without notice and a right to be heard." The decision in question is likewise in conflict with the previous decision of the Court of Appeals in *Bradley v. Simpson*, 59 Ga. App. 844 in which it was held, "although the proceeding to revoke the order of the court admitting the attorneys to practice in this state may not be a proceeding to disbar, it is in the

nature of such an action, and it is a proceeding involving a valuable right, and a party defendant and legal service upon him are prerequisites to the validity of a judgment therein."

The decision by the Court of Appeals of Georgia creates a conflict in the decisions in Georgia and denies to petitioner a right especially set up and claimed in this case under the Constitution of the United States, to-wit, his right to be not deprived of his property without due process.

THIS ACTION IS NOT AGAINST THE STATE OF GEORGIA.

The learned Court of Appeals decided that this action is against the State of Georgia, and while it may be unnecessary to discuss whether or not this is a suit against the State of Georgia, still out of abundance of caution, it is thought best to at least, to some extent discuss this question sufficiently to demonstrate beyond peradventure of a doubt that *the action is not against the State* of Georgia.

If our position is correct here, that this judgment is void, then surely the State of Georgia does not give its sanction and become a party to irregular and unlawful conduct and the entry of unauthorized and illegal judgments.

It is submitted that the rule exempting a State from suit has never been extended so far as to shield an individual, whether as a Judge or State Officer, or whatever he may be in the engagement in illegal and unlawful conduct.

It has been well said:

> "Application in receivership suit by company reinsuring obligations of insolvent insurance company, for order requiring State Commissioner of Insurance to surrender securities held in trust for policyholders, was not a proceeding against the state prohibited by the Constitution."
>
> Hobbs v. Occidental Life Ins. Co., 87 F. 2d 380.

The above quotation is the first *syllabus* of the cited case, and in the course of the opinion, Judge Bratton of the Tenth Circuit Court of Appeals said:

> "The state has no pecuniary interest in them. It will not profit in any way by their retention or suffer

in any way by their surrender. The order cannot subject it or any of its officers to any diminution of assets or reduction of revenues. Its operative effect is confined to suitors who are parties to the action. The proceeding is therefore not one against the state which comes within the ban of the Eleventh Amendment."

"The matter then stands here a suit in personam to prevent the defendants acting pretendedly as officials, but in reality as persons, arbitrarily and unlawfully refusing to execute the permits which the plaintiff must have and to which he is entitled, thus depriving him of his property."

Jackson v. Railroad Company, 12 F. S. 348.

Judge Adams of the Eighth Circuit Court of Appeals said:

"A majority of its members, constituting a working quorum, refused to permit the board to perform that duty and compelled it to decline to do so. In so acting, it did not stand for the state of Missouri and were not the state of Missouri within the meaning of the Eleventh Amendment of the Constitution. A sovereign state must be presumed to be willing that its laws shall be obeyed. Through its laws, it spoke to its servants and commanded them to do something. Certainly those servants, by their act of disobedience, do not represent or stand for the state. This suit, therefore, instead of being against the state, is against its servants to compel them to do a duty which, by accepting office, they had agreed to perform."

Ruidekeper v. Hadley, 177 F. 1, at page 6.

See also, Dept. of Penal Institutions v. Wymore, 165 S.W. 2d 618, 350 Mo. 127.

"An action against comptroller and deputy for determination that the plaintiff was not subject to occupation tax sought to be imposed could be maintained under the Uniform Declaratory Judgment Act, even if considered an action against the state."

Harrington v. Cobb, 185 S.W. 2d 133, (Tex. Civ. App.)

"The constitutional immunity of the state from suit does not extend to officers when an effort is made to compel them to perform ministerial acts, nor when officers under a mistaken interpretation of the law acting in the name of the state commit acts not within their authority which are injurious to the rights of others."

Curry v. Woodstock Slag Corp., 6 So. 479, 242 Ala. 479;

See also, Avery Freight Lines v. White, 18 So. 2d 394, 245 Ala. 618: State v. Louis Pizitz Dry Goods Co., 11 So. 2d, 342, 243 Ala. 629.

"An action by the state of Wyoming against an official of the Department of the Interior involving a dispute as to the jurisdiction of the state and the national government in and to the segregated area known as the Jackson Hole National Monument, was legally laid against defendants as an officer acting in excess of his authority, where it was claimed that the authority exercised and threatened to be exercised was not validly conferred by statute."

State of Wyoming v. Franke, 58 F. S. 891.

See also, authorities cited in Judge Kennedy's opinion, commencing on page 893.

Can it be said that judges of a State Court can in defiance of the rights of citizens take away valuable rights without any semblance of compliance with law, and when this highhanded method is called into question, say that it is against State, and that they can successfully say that the State and not they did it? Such is a slander upon the State. The State should never be charged with the illegal and unlawful acts of its judges and officers.

The lower Court greatly stressed the fact that this action is against the judges in their official capacity and not as individuals. It seems the learned Court of Appeal Judges lamently misconceived the import of this, as well as the other points in the case. The wrong the defendants committed, was as judges, not as individuals. Therefore, their conduct should properly be called in question in the capacity in which the wrong was perpetrated.

Surely it cannot be said that because there is no adversary party but the judges themselves, that they can commit any and all manner of wrongs, and cannot be subjected to an action. Here, the only adversary party are the judges. They entered the order assailed herein without suit, action, pleading or application. No other person is concerned on the record with this order. Suppose instead of entering an order of disbarment against the plaintiff, they had entered up a money judgment without action, pleading, notice, motion, or application, in favor of the state. Manifestly the state could not be sued to set aside the judgment because of the constitutional inhibition against suits against states without consent. Can it be contended that an action would not be proper to free the record of such a judgment? Then it must be apparent that the judges entering up such a money judgment would be the only adversary party against whom the action could be filed. It won't do to say 'the action could run against an officer when an execution was issued.' An execution might not be issued, and still that judgment would cloud the title of the plaintiff's lands in Fulton County, Ga., so that no buyer would accept the title.

PUBLIC IMPORTANCE.

The instant case is one of gravity, importance and public concern, because:

The right of petitioner to practice law in Georgia is of great public importance, and it is important that the constitutional rights of a citizen be not taken from him without notice, or giving him an opportunity to be heard and without being advised of any charges whatsoever against him, and that he be accorded due process and equal protection of the law.

It is of great public importance and concern wherein a most important matter of policy might be drawn into consideration, because if the law as laid down by the Court of Appeals in this case be permitted to stand, it might be reasonably expected to lead would-be students of the law to other fields of endeavor, where their years of effort could not be arbitrarily thwarted by a committee's report implying fraud without stating what the fraud was, and without the oppor-

tunity of any semblance of defense. In justice to the legal profession—in justice to the nation most of whose leaders received their training in the law profession—in justice to the American system of constitutional law, which affords even the meanest criminal, even the most diabolical and cruel mass murderers in history now on trial in Europe and Asia—at least the right to charges, notice, a hearing and right to representation, this court should take jurisdiction of this case, and not let it be said before the world that in Georgia, licensed attorneys can be disbarred without a hearing. Georgia was one of the states which rebelled against tyrannical passage and administration of laws, which resulted in our Federal State bills of right. We have come too far now to permit such a precedent as this to form a hole in the dyke of our constitution. Local disbarment is virtually national.

(a) It involves the construction of the statute (Acts 1937 p. 464) repealing the rules adopted by the judges of the Superior Courts (Supreme Court Rule 52 (b)).

(b) It involves the power and duties of a public officer, to-wit: a judge of the Superior Court, to admit practitioners to the bar upon compliance with the statute relating thereto, without having to comply with the rules of the Superior Court relating thereto (Rule 52 (c)).

(c) It involves the power and duty of a public officer, to-wit: a clerk of the Superior Court, to issue a license to an attorney admitted to practice, upon payment of the necessary fees, without having to comply with the void rules of the Superior Court (Rule 52 (c)).

(d) It involves important rules of procedure both as enacted by the General Assembly, and as promulgated by the Supreme Court of Georgia, under legislative authority, relating to admissions to the bar and licensing of practicing attorneys, the meaning and application of which have not been settled by any previous decision of the Supreme Court (Rule 52 (d)).

(e) It involves a ruling of the Court of Appeals approving a procedure relating to the admission of an attorney to practice law, and *who as such is an officer of the*

court, which ruling was at variance with a decision of the Supreme Court, to-wit: Jones v. Boykin, 185 Ga. 606 (1), 608, holding invalid other of the Superior Court rules, similarly and simultaneously adopted, to those applied by the Court of Appeals, and therefore creates confusion among the bench and bar as to whether or not such rules are now of force (Rule 52 (c, e)).

(f) It is further important and of public concern in that said decision has the effect of thwarting the expressed intention of the Legislature providing the conditions, requirements and procedure, under which the humblest citizen may be admitted to practice law, and permits a small, prejudiced group without preferring any specific charges, to prevent an attorney to practice law by a mere statement that there was "fraud in the application" without any statement as to what the fraud consisted of, such power of preventing an applicant being admitted to practice is a matter of deep and even deterring concern to every law school graduate, as your petitioner, who has spent thousands of dollars and years of effort in preparing himself to stand the bar examination, and which, if such applicant could have no more assurance of his admission to practice after standing the bar examination and otherwise complying with the statute than such arbitrary report of a committee, would strongly tend to deter aspirants from undertaking the study of law resulting in shortage of attorneys eventually, and would involve an important question of public policy.

(g) All such reasons are of further gravity and public importance, because they relate to the eminent and important profession of the practice of the law, in which all of the public in some manner and to some extent, is interested, first or last.

(h) It is of utmost public concern and importance that Georgia's Ku Klux Klans' insidious influence do not prevail, that your petitioner be condemned without a hearing, without any notice of any charges against him or anything, and be denied due process and full protection and equality of the law.

~~Wherefore petitioner prays that a writ of certiorari issue~~

Wherefore petitioner prays that a writ of certiorari issue out of and under the seal of this Court, and that this Court review the decision of the said Court of Appeals of Georgia, rendered in Case No. 30945 on the docket of said Georgia Court of Appeals, and that said judgment of the Court of Appeals of Georgia may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and that this Honorable Court declare that these orders of the Superior Court and of the Georgia Court of Appeals are void, and that the rights and status of petitioner as an attorney at law, and his license to practice law in the State of Georgia, are still in force and effect.

BERNARD M. SHOTKIN,
Petitioner Pro Se,
1356 Newton St., Denver 4, Colo.

The decisions of Justice Murphy and Justice Rutledge in the Supreme Court recently No. 98, and 818 Mis., Oct. Term 1945, decided in 1946—against failure of due process—even for these Jap Killers—gives hope to your petitioner, that he, born and bred in the United States, who loves the law, and the right to practice law means more than life itself to him, will find here in your honorable court, the due process and equal protection and equality of laws guaranteed him by the United States Constitution .....that was denied him by the Courts of Georgia. and your petitioner repeats these decisions of Justice Murphy and Justice Rutledge.

"But neither proof of guilt or the acts of atrocity of the Japanese Troops could excuse the undue haste in which the trial was conducted or the promulgation of a directive containing such obviously unconstitutional provisions as those approving the use of coerced confessions, . . . to try the petitioner in a setting of reason and calm, to issue and use constitutional directives and to obey the dictates of a fair trial are not impossible tasks.

Hasty revengeful actions are not the American way. All those who act by virtue of the authority of the United States are bound to respect the principles of justice codified in our constitution. Those principles which were established after so many centuries of struggle can scarcely be dismissed as narrow artificialities, or arbitrary technicalities. They are the very life blood of our civilization. Today the lives of Yamashita and Homma . . . are taken without regard to due process of law. There will be few to protest. But tomorrow the precedent here established can be turned against others. A procession of judicial lynchings without due process of law may now follow. No one can foresee the end of this failure of objective thinking and adherence to our high hopes of a new world—. The time for effective vigilance and protest, however, is when the abandonment of legal procedure is first attempted. A nations must not perish because in a National Frenzy of the aftermath of war, it abandoned its central theme of the dignity of the human personality and due process of law."

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945.

No.

BERNARD M. SHOTKIN, PETITIONER,

v.

JUDGES SUPERIOR COURT, ATLANTA CIRCUIT, wrongfully entitled State of Georgia, RESPONDENT.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I. OPINION OF THE COURT BELOW.

The opinion of the Court of Appeals of Georgia has not yet been officially reported in the Georgia Reports. It was rendered October 2, 1945, and appears in Vol. 35 S.E. (2d), page 556.

II. JURISDICTION.

Jurisdiction is invoked on the grounds as set forth in the Petition for writ of certiorari, and, for brevity, are not repeated.

III. STATEMENT OF THE CASE.

The statement of the case as contained in the statement of facts in this Petition is sufficient. Its repetition here is omitted.

IV. SPECIFICATION OF ERRORS.

The Court of Appeals of Georgia erred:

1. In refusing to reverse the judgment of the Superior Court of Fulton County, Georgia, and in affirming same.

2. In holding that the petition and motion of petitioner to vacate and set aside the orders cancelling and revoking his license to practice law to be insufficient and showed no valid reasons for setting aside said revoking orders.

3. In refusing to hold that the orders of August 14, and of September 1, and of September 21, 1944, by the Superior Court were null and void because without notice, without pleading or charges, without a hearing, and without opportunity to be heard.

4. In refusing to hold that said orders of the Fulton County Superior Court, so revoking petitioner's license to practice law, without notice, hearing or opportunity to be heard, deprived petitioner of his property without due process of law.

5. In holding that any of Sections 24-3304, 3305, 3306 of the Supplement to Georgia Code of 1933 have any force, effect or validity as laws of the State of Georgia.

6. In denying to petitioner equal protection of the law in violation of the XIV Amendment to the Constitution of the United States.

V. SUMMARY OF ARGUMENT.

Point A. The right of an attorney to practice law is a property right, within the constitutional protection of due process.

Point B. Petitioner was denied due process by revocation of the order admitting him to practice, and cancelling the license previously issued to him, without notice, hearing or opportunity to be heard.

Point C. Admission to practice governed exclusively by Georgia Statutes. Superior Courts and Judges are without power to alter, modify or add to the statutory requirements.

Point D. The decision of the Court of Appeals in this case is at variance with, contrary to, its own previous decisions and those of the Georgia Supreme Court. It denies to petitioner his right to the equal protection of the laws.

VI. ARGUMENT.

Point A. The right of an attorney to practice law is a property right, within the constitutional protection of due process.

The above principle is well established by this Court, and recognized by the Court of Appeals of Georgia as to other persons, although overlooked as to petitioner. The doctrine was announced in Bradley v. Fisher, 80 U.S. 335; 20 L. Ed. 647, 652. The Court of Appeals of Georgia cited that case as authority for its statement, in DeKrasner v. Boykin, 54 Ga App. 29, 37; 186 S.E. 701, that:

> "The right to practice law, after *once admitted*, is to be considered a property right, of which one is not to be deprived, without notice and a right to be heard."

Said Georgia Court also, in reversing action of the Superior Court which refused to issue a rule nisi to set aside an order of disbarment, without personal service on the attorney, said:

> "A judgment against the person of a defendant without notice to him or an appearance by him, is without jurisdiction and entirely void."

Whether the proceeding is one to disbar, or, as in the present case, to revoke the order admitting to practice, makes no difference, according to this Georgia Court of Appeals, in the case of another attorney. In *Bradley v. Simpson,* 59 Ga. App. 844, the court said:

> "Although the proceeding to revoke the order of the court admitting the attorney to practice in this State may not be a proceeding to disbar, it is in the

nature of such an action, and it is a proceeding involving a valuable right, and a party defendant and legal service upon him are prerequisites to the validity of a judgment therein."

While the above case, which involves a contempt against a witness for refusal to testify, was reversed by the Supreme Court, the reversal was because the Supreme Court held that service by mail, actually given, was sufficient. *But there was service. Here there was not even an effort or attempt at service. The proceedings were wholly secret and Star-Chamber. Why the Georgia court should apply one rule to a man named Bradley, or Simpson, and a different rule to a man named Shotkin, is difficult of comprehension to petitioner.*

The *DeKrasner* case, supra, was later cited, approved and followed in *James v. State,* 61 Ga. App. 860, holding that the court is without authority to act in a matter of disbarment without notice or hearing, and that "there can be no doubt" about this.

Were any such needed, additional strong authority, upholding the same fundamental principles, are:

Ex Parte Garland, 71 U.S. 333; 18 L. Ed. 366, 370;
Keeley v. Evans, 271 Fed. 520, 522;
Selling v. Bradford, 243 U.S. 46; 61 L. Ed. 585, 587.

The correct procedure to have been followed, and consistent with due process, was suggested by Judge Etheridge in his order of August 14th, 1944, namely to allow any interested party to apply for a rule nisi to petitioner to show cause why the order of July 10th admitting him to practice should not be revoked, and with service thereof on petitioner. Such was the exact procedure indicated by the court in *Simpson v. Bradley,* 189 Ga. 316, decided in 1939, namely a petition by the Solicitor General

"for an order or rule nisi, requiring defendants to show cause why the orders of admission (to practice law) should not be revoked, for an order of revocation,

for a proper provision in the rule nisi for service on defendants."

The Supreme Court further notes; in the above case, at page 318, that even in the case of "a mere motion to set aside the previous judgment admitting persons to the practice of law" there is a prayer for special service and "extraordinary service provided under the Code §81-204."

Point B. Petitioner was denied due process by revocation of the order admitting him to practice and cancelling the license previously issued to him without notice, hearing or opportunity to be heard.

No citation of authority is needed by this Honorable Court, in support of the above point, nor as to what constitutes due process and full protection and equality of law. In all of these proceedings in the Superior Court of Fulton County, Georgia, to revoke the previous order which specifically admitted him to practice, recited his compliance with the statutory requirements, and ordering the clerk to issue his license to him, authorizing him to practice law, and to revoke his license, *petitioner never had his day in court. He was condemned without a hearing. He was given no notice of any charges against him, of any action by anybody, even contemplated, to question his right to practice or to be admitted to the bar. He was given no hearing on anything. He was afforded no opportunity to be heard, or to plead any defense or to offer any explanation. He was given no notice of anything he was called upon or supposed to answer, defend or explain.*

There is no dispute as to the failure to give petitioner notice, the failure of service or process of any kind, or the fact that there was neither hearing nor opportunity to be heard. The sworn petition and motion of petitioner to vacate these void orders, entered without jurisdiction, was met by no plea to the contrary. The issues were heard on the demurrer of the Solicitor General to the sworn petition. Under Georgia practice, as elsewhere, this raised no question of fact on these points in the record. *Such was the holding by the Georgia Court of Appeals in Strickland v. Willingham,* 49 Ga. App. 354, cited above, wherein, on similar sworn petition as to lack of notice or knowledge of the

proceedings by the attorney, there being no plea to the contrary, the judgment entered without notice was held "without jurisdiction and entirely void."

> *"Much more so will equity enjoin parties from enforcing those obtained without service. For in such a case the person named as defendant 'can no more be regarded as a party than any other member of the community.' Such judgments are not erroneous and not voidable but upon principles of natural justice, and under the due process clause of the Fourteenth Amendment, are absolutely void. They constitute no justification to a plaintiff who if concerned in executing such judgments is considered in law as a mere trespasser.* Harris v. Hardeman, 14 How. 339 (default judgment entered on improper service). Williamson v. Berry, 8 How. 541; Scott v. McNeal, 154 U. S. 46; Western Indemnity Co. v. Rupp, 235 U. S. 273.
>
> *"On principle and authority, therefore, a judgment, obtained in a suit of which the defendant had no notice, was a nullity and the party against whom it was obtained was entitled to relief."*
>
> Simon v. Southern Railway Co., 236 U. S. 115, 35 S. Ct. 254, 59 L. Ed. 492.

> "If judgments of a state court are void wholly or as to a particular party, and the other requisites of jurisdiction are present, a federal court may enjoin their execution, notwithstanding Rev. St. § 720 (Comp. St. § 1242), providing that a United States court shall not stay proceedings in any state court."
>
> Mohawk Oil Co. v. Layne, 270 Fed. 841.

Point C. Admission to practice law are governed exclusively by Georgia Statutes. Superior Courts and Judges without power to alter, modify or add to the statutory requirements.

This point has already been largely covered in the petition for certiorari. It needs but little elaboration. The decision and opinion of the Court of Appeals here involved cleverly, and no doubt intentionally, gives the impression that the rules of the judges of the Superior Court are in

fact statutes passed by the General Assembly of Georgia. Such impression is inevitable from the references to such rules as appearing in the "Georgia Code."

As to these rules, referred to in the decision in question as in Sections 24-3302 to 24-3310, there are various other provisions purporting to regulate admission to the bar. These rules, to the best of petitioner's information, were passed in 1936 at a convention of the Judges of the Superior Courts. But the Code section, the statute, under which they purportedly acted, Code §24-2628, was promptly repealed by the General Assembly in 1937, set forth in the Appendix, which specifically makes ineffective and of no force or effect any rules so passed or recommended by these Judges "until enacted into law by the General Assembly of Georgia."

Not only were such rules as specified additional educational qualifications for admission to the bar, held invalid and wholly beyond the power or authority of the Superior Court Judges to adopt, by the decision in Jones v. Boykin, 195 Ga. 606, but the editors of the Code Supp. Cumulative Pocket Part for 1943, Title 24, page 57 further state that while the extra educational requirement rule and

> **"other rules prescribing additional requirements for admission to the bar were repealed by Acts 1937, pp. 464, 465, the rules as adopted by the convention of judges are set out in full.** *They do not appear in the permanent volumes of the Code,* and convenient access to them cannot be had unless they are retained in this supplement."

No such statutes or rules were ever passed or enacted into law by the General Assembly of Georgia. Especially no such rule as the one stating that no one shall be admitted to practice until the Grievance Committee has reported favorably on the moral fitness of the applicant, provided such report is filed within 30 days after a questionnaire, answered by the applicant, has been given to such committee. The only statutory requirement on this subject is section 9-109, namely "a certificate from two practicing members of the bar of this State as to his moral character."

Then §9-112 gives the right to his license to practice to all persons "who have successfully passed the examination, with a proper certificate from the board of examiners to that effect."

Then by §9-114 power is given to the Supreme Court—not to any other court or judges—to pass rules, but only such rules "as may be necessary to carry the foregoing provisions for admission to the bar into effect."

No power was ever given to the Judges of the Superior Court by the Georgia Assembly, or by any other source, to enact rules governing admission to the bar. The Assembly itself enacted a complete and exclusive Code, and set forth the only requirements for admission.

The only authority or power given to the Judges of the Superior Court as to rules, was that embodied in the Act of 1937, above referred to. That power was limited in two particulars, first, only to "rules of practice throughout the several circuits," and secondly, only the power to "recommend" such rules to the General Assembly, not to adopt or pass the rules. Only the General Assembly could give the force or effect of law to such rules.

But the Supreme Court, in Jones v. Boykin, supra, expressly denied to the Superior Court Judges any power to pass rules "governing the qualifications for admission to the bar" because such qualifications and the question of admission to the bar:

> **"cannot be properly accounted as a rule of practice in the Superior Court, to the establishment of which the convention of judges is limited."**

The full bench concurred in the above opinion. And yet the Georgia Court of Appeals unblushingly cites and quotes these rules, ineffective and without power as they are, as though they were valid provisions of the Georgia Code, duly enacted by the General Assembly.

The Supreme Court of Georgia, in another decision in which all the judges concurred, in *Ex Parte Ross,* 196 Ga. 499, 502, cited above, denied to itself any power to alter or nullify by rule any of the statutory code provisions governing admission to the bar, even under §9-114. That decision

is so decisive of the point now argued that we quote from it more fully, since the Court there conclusively holds that the Code statutory provisions completely and exclusively govern admission to the bar. The court refers to Code Sections 9-101, 111, 112 and 115, and says:

> "These are valid provisions of law, designed by the legislature in the exercise of its constitutional authority to protect the public. They may not be set at naught by any action of the courts. They are not subject to *alteration* or nullification by any rule which may be adopted by the Supreme Court pursuant to the authority conferred by the Code, §9-114."
>
> "The State Board of Bar Examiners are appointed by the Judges of the Supreme Court §9-105. The meetings of that Board are fixed by the rules of the Supreme Court §9-108. The authority for the Board to hold a bar examination is set forth in §9-110. That Board shall pass upon the merits of each examination, and shall determine whether or not each applicant is qualified * * *. Rule 8 makes it *the duty* of the judges of the Superior Court, upon receipt of a certificate from the State Board to the effect that an applicant is entitled to practice law, *to deliver to the applicant an order to the clerk of that court to issue to the applicant a license to practice law.*"

(The italics above, and all others in the brief, are supplied, unless otherwise noted.)

The above decision was rendered in 1943. Its mandate is that when the State Board of Examiners certifies, as it did in this case, that petitioner was entitled to practice law, then the judge must order the license to issue. Not a single requirement, other than these enacted by the General Assembly, can be demanded of the applicant. No other compulsion or compliance can be required of him. The Certificate by two members of the Bar as to his moral fitness is sufficient and all that the Code requires.

Point D. The decision of the Court of Appeals in this case is at variance with and contrary to its own previous deci-

sions and those of the Georgia Supreme Court. It denies to petitioner his right to the equal protection of the laws.

The departure by the decision in this case from the prior rulings in other similar cases, both by the Court of Appeals and Supreme Court of Georgia, to persons other than petitioner, which it denied to petitioner, under similar circumstances, is obvious and glaring. By those other decisions it was established that a proceeding to revoke order granting a license to practice was in the nature of disbarment, and wholly void and without jurisdiction, when without notice or hearing—but not so as to petitioner; that the rules of the judges adding requirements for admission to the bar beyond the statutory requirements were invalid—but valid when applied to petitioner; that others are entitled to notice, and a hearing on application to revoke order granting a license, and to a rule nisi,—but that petitioner is not so entitled.

Petitioner was thus not given the protection of the laws equal to that accorded to others under exactly the same circumstances. Mr. Chief Justice Fuller in *Leeper v. Texas,* 139 U.S. 462; 35 L. Ed. 225, 227, stated it was settled that by the 14th Amendment:

> "No State can deprive particular persons or classes of persons, of equal and impartial justice under the law,"

and that due process is secured

> "by laws operating on all alike."

And in *Pace v. Alabama,* 106 *U.S.* 583, 27 *L. Ed.* 207, Mr. Justice Field, referring to the 14th Amendment, announced that included in the "equality of protection under the laws" is

> "accessibility by each one, whatever his race, on the same terms with others, to the courts of the country for the security of his person and property."

Here, petitioner did not receive from the courts the same terms as others received, as shown by these Georgia cases. By dismissing his petition and motion to revoke and

rescind the orders of the Superior Court, entered without notice, charge or hearing, petitioner was denied accessibility, on the same terms that other received, to the courts for the security of his property, his right to practice law.

This Honorable Court has heretofore dealt with a somewhat similar situation in which the decisions of the State Court were conflicting and confusing. In *Gelecke v. Dubuque,* 68 U.S. 175; 17 L. Ed. 520, 525, 526, wherein prior decisions of the State of Iowa had upheld laws under which certain municipal bonds had been issued and thereby upheld the validity of the bonds yet later decisions by the Supreme Court of Iowa overruled the previous decisions. This Court held that it would not be bound to follow the latest adjudication. This Court said:

> *"It cannot be expected that this court will follow every such oscillation, from whatever cause arising, that may possibly occur. The earlier decisions, we think, are sustained by reason and authority. * * * We shall never immolate truth, justice, and the law, because a state tribunal has erected the altar and decreed the sacrifice."*

Before a man can be called upon to present his life history and explain his every act, he must be properly and legally presented in a court having jurisdiction after due and legal notice and service according to the forms of law. Rumors, half truths and scandalmongers cannot displace the law or due process or equal protection of the law. No man or set of men are so high that they are above the law. No more appropriate decision could be cited at the moment than the eloquent and learned decision of Judge Bleckley in the case of Cochran vs. State, 62 Ga. 731-2 in which he said:

> "Those who are impatient with the forms of law ought to reflect that it is through form that all organization is reached. Matter without form is chaos, power without form is anarchy. The State, were it to disregard forms, would not be a government but a mob. Its action would not be administration but violence. The public authority has a formal embodiment in the State, and when it moves, it moves as it has

> said by its law it will move. It proceeds orderly, and according to pre-established regulations. The State, though sovereign, cannot act upon the citizen in a different manner from that which the laws ordained. It cannot inflict capital punishment without first trying the prisoner according to law. There is no dispensing power. Courts have none. Courts are bound by the law no less than the prisoner at the bar."

Judge Powell, in Ivey vs. The State, 4 App. 828, 831 (62 S.E. 565) says:

> "We digress to say that the opinion of Judge Bleckley in the case just cited (Cochran vs. The State), should be read periodically by every judge and lawyer. We sometimes become impatient with what we call the technicalities of the law; to read this opinion brings us back to a truer appreciation of what a noble thing it is to obey the law as it is written."

Much more so will equity enjoin parties from enforcing those obtained without service. For in such a case the person named as defendant "can no more be regarded as a party than any other member of the community." Such judgments are not erroneous and not voidable but upon principles of natural justice, and under the due process clause of the Fourteenth Amendment, are absolutely void. They constitute no justification to a plaintiff who if concerned in executing such judgments is considered in law as a mere trespasser. Harris v. Hardeman, 14 How. 339 (default judgment entered on improper service). Williamson v. Berry, 8 How. 541; Scott v. McNeal, 154 U. S. 46; Western Indemnity Co. v. Rupp, 235 U. S. 273.

> *"On principle and authority, therefore, a judgment obtained in a suit of which the defendant had no notice, was a nullity and the party against whom it was obtained was entitled to relief."*
>
> Simon v. Southern Railway Co., 236 U. S. 115, 35 S. Ct. 254, 59 L. Ed. 492.

It was held by the United States Supreme Court in *Bradley v. Fisher,* supra, 20 L. Ed. at page 652, as follows:

> "The office which the party thus acquires is one of value, and often becomes the source of great honor and emolument to its possessor. To most persons who enter the profession, it is the means of support to themselves and their families. To deprive one of an office of this character would often be to decree poverty to himself and destitution to his family."

We again call attention to the case of *Bradley v. Fisher* above referred to wherein the court said, concerning the power of removal of an attorney from practice, that unless for an offense committed in open court in the presence of the judges:

> "The power of the court should never be exercised without notice to the offending party of the grounds of complaint against him and affording him ample opportunity of explanation and defense. This is a law of *natural justice,* and is applicable to cases where the proceeding is taken to reach the right of an attorney to practice his profession as it is when the proceeding is taken to reach his real or personal property."

In the *Ex Parte Garland,* 71 U. S. 333, 18 L. Ed. 366-70, the U. S. Supreme Court likewise said concerning attorneys:

> "They hold their office during good behavior, and can only be deprived of it for misconduct ascertained and declared by the judgment of the court after opportunity to be heard has been afforded."

And again says the court:

> "The attorney and counselor being, by the solemn judicial act of the court, clothed with his office, does not hold it as a matter of grace and favor. The right which it convers upon him to appear for suitors, and to argue causes, is something more than a mere indulgence, revocable at the pleasure of the court, or at the command of the Legislature."

And in the case of *Selling v. Radford,* 243 U. S. 46; 61 L. Ed. 585, 587, the United States Supreme Court while questioning its power to review the action of a State Supreme Court in disbarring an attorney, nevertheless fixed

limitations upon the finality of such state rulings, conditioned on due process. The court said:

> "We are of the opinion that we should recognize the condition created by the judgment of the state court unless, from an intrinsic consideration of the state record, one or all of the following conditions should appear: 1, *that the state procedure, from want of notice or opportunity to be heard, was wanting in due process.*"

PETITIONER WAS, THEREFORE, DENIED EQUAL PROTECTION OF THE LAWS OF GEORGIA.

The equal protection of the laws of a state is extended to persons within its jurisdiction, within the meaning of the constitutional requirement, when its courts are open to them on the same conditions as to others, with like rules of evidence and modes of procedure, for the security of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; when they are subjected to no restrictions in the acquisition of property, the enjoyment of personal liberty and the pursuit of happiness, which do not generally affect others; when they are liable to no other or greater burdens and charges than such as are laid upon others; and when no different or greater punishment is enforced against them for a violation of the laws. State v. Montgomery, 94 Me. 192, 47 A. 165, 80 Am. St. Rep. 386. And see Duncan v. Missouri, 152 U. S. 377, 14 S. Ct. 570, 38 L. Ed. 485; Northern Pac. R. Co. v. Carland, 5 Mont. 146, 3 Pac. 134; Missouri v. Lewis, 101 U. S. 25, 25 L. Ed. 989; Cotting v. Godard, 183 U. S. 79, 22 S. Ct. 30, 46 L. Ed. 92; State Board of Assessors v. Central R. Co., 48 N. J. Law, 146, 4 A. 578; Minneapolis & St. L. R. Co. v. Beckwith, 129 U. S. 26, 9 S. Ct. 207, 32 L. Ed. 585; State v. Sixth Taxing Dist., 104 Conn. 192, 132 A. 561, 563; Harrison v. Caudle, 141 S. C. 407, 139 S. E. 842, 845; South Carolina v. McMaster, 237 U. S. 63, 35 S. Ct. 504, 506, 59 L. Ed. 839; Standard Oil Co. of Louisiana v. Police Jury of Red River Parish, 140 La. 42, 72 So. 802, 804; Sealy v. Dussel, 157 La. 485, 102 So. 581; Davis v. Florida Power Co., 64 Fla. 246, 60 So. 759, 766, Ann. Cas. 1914B, 965; Power Mfg. Co. v. Saunders, 274 U. S. 490, 47 S. Ct. 678, 679, 71 L. Ed. 1165; City of New Orleans v. Le Blanc, 139 La. 113, 71 So. 248, 250.

UNJUSTIFIED INFERENCES BY THE GEORGIA COURT OF APPEALS.

Petitioner cannot pass without comment the indulgence by the decision here involved of every "inference" against petitioner. It first infers that the order of July 10th, requiring license to issue was "contingent" upon further compliance with some law. That inference is contrary to the plain words of the order, as appears upon its face (R. 20). It is contrary to the sworn allegation of petitioner—not disputed—that the Judge, on issuing his order on July 10th, congratulated petitioner and wished him success at the bar (R. 10).

Then there is the statement that it is "easily inferable from the record" that the procuring of the orders of July 10th and the "judgments granting to plaintiff the right to practice law, and the procuring of a license thereunder is tainted with fraud."

The only single word from which this "easy inference" of fraud arises, or could possibly arise, was that stated by the decision as being contained in the resolution of the grievance committee that in their judgment, any proceedings for admitting him to the bar be revoked "on account of fraud in the application." (R. 34.) The above resolution was the sole report made by this committee, as stated by the decision itself. There was not a single allegation of any fact that constituted fraud. Even the Georgia Court must know the elementary, fundamental doctrine that fraud is never presumed, never inferred. There must be a direct, positive and certain allegations of facts which constitute the alleged fraud.

A further sufficient answer is the fact that petitioner's sworn pleading to revoke these void orders denied that there was any fraud in his application.

CONCLUSION.

Petitioner cannot refrain from at least mentioning a matter appearing in the record. Justification and excuse for this arises from the departure, as above discussed, by the Georgia Court of Appeals from its own prior rulings, and from Supreme Court decisions, in denying to petitioner

the same remedies and relief which had theretofore been granted to others under exactly the same circumstances of lack of due process. Petitioner is wholly unable to account for this discrimination against him, unless, possibly, explanation, albeit no justification, be found in the question asked of petitioner at the time he was orally arguing his case before the Court of Appeals (R. 53). As shown in the record, despite petitioner under oath had stated in his petition that he was a citizen of the United States one of the judges asked petitioner what was his nationality in such a manner petitioner had to answer "Jewish." Petitioner then moved without avail, that this judge be disqualified from hearing the case.

Petitioner is aware, as a matter of common knowledge, that Georgia was the birthplace and breeding-ground of the hooded and masked precursors of Hitlerism which spreads the seeds of hatred and race-discrimination throughout this fair land of America until it became a menace and a social disease. Can it be that the seeds still germinate, and that the fungus growth of that prejudice still pervades and reaches even to the sacred halls of justice? Petitioner is loath to credit or believe it. And, in such disbelief, petitioner still cannot understand why, without notice, service, charge, hearing or chance to be heard, he was thus deprived of his valuable right to practice law and to provide a livelihood for himself and his family, or why a different rule is applied in his case from that prevailing, without exception, as to others in the courts of Georgia.

It is, therefore, respectfully submitted that this case calls for the exercise of the supervisory powers of this Honorable Court in order that the errors complained of may be corrected, and to that end that a writ of certiorari be granted and this Honorable Court review the decision of the Court of Appeals of Georgia, and finally reverse it, and that this Honorable Court declare that these orders of the Superior Court and of the Georgia Court of Appeals are void, and that the rights and status of petitioner as an attorney at law, and his license to practice law in the State of Georgia, are still in force and effect.

BERNARD M. SHOTKIN, Pro Se.

APPENDIX.

GEORGIA CODE 1933.
§§9-101 to 9-115.

9-101. *Examination, requirement of.*—No person except licensed attorneys from other States hereinafter provided for in section 9-201, shall be admitted to practice law in this State except by examination as is now or may hereafter be provided for by law. (Acts 1933, p. 224.)

9-102. (4931) *Right of attorneys admitted in the superior courts to practice in other courts.* (Not applicable.)

9-103. (4932) *Qualifications of applicant.*—Any citizen, of good moral character, who has read law and undergone a satisfactory examination as hereinafter prescribed, may practice law.

9-104. (4933) *Aliens, eligibility to admission.* (Not applicable.)

9-105. (4936) *Appointment of board of examiners; qualifications of members.*—It shall be the duty of the Justices of the Supreme Court to appoint a board of three examiners, designating one of their number as its chairman, whose powers and duties shall be as hereinafter declared, and the members of which shall be learned and experienced attorneys at law of generally recognized ability and integrity.

9-106. (4937) *Terms of office of members of board; vacancies.* (Not applicable.)

9-107. (4938) *Oath of members of the Board.* (Not applicable.)

9-108. (4938) *Meetings of the board.* (Not applicable.)

9-109. (4934) *Application for admission to the bar; certificate as to moral character.*—Any person desiring to become a member of the bar shall make a written application to a judge of any superior court, accompanying the application with a certificate from two practicing members of the bar of this State as to his moral character, and those certifying to such character shall further state in said certificate that they have examined the applicant upon the

various branches of the law and deem him qualified for admission to the practice of the law. The certificate of character and qualification shall be sealed with the number assumed by the applicant, so that said name shall not be disclosed until after the grading of such examination.

9-110. (4935) *Topics and subjects of the examination.* (Not applicable.)

9-111. (4940) *Examination to be in writing; scope thereof; supervision; signatures to papers.*—Each applicant shall submit to an examination in writing, which shall be prepared by the board of examiners, covering all the topics and subjects a knowledge of which is, under existing laws, requisite to admission to the bar. Said board shall pass upon the merits of each examination, and as to each applicant determine whether or not he is qualified to plead and practice in the several courts other than the Supreme Court and Court of Appeals, admission to the bar of which shall be governed by existing laws. All examinations of applicants shall, in accordance with said rules, be conducted under the supervision of the judges of the respective superior courts. Each applicant shall sign his examination paper by number, and, in a sealed envelope accompanying said paper, shall state the number he has adopted, so that his name shall not be known until after the board of examiners have passed upon the question of his admission or rejection.

9-112. (4941) *When and how applicant may be licensed.* —All persons who have successfully passed the examinations, with a proper certificate from the board of examiners to that effect, may be duly licensed to practice law upon taking the oath provided by law, and may receive a license to practice, upon presentation of said certificate to the clerk of the superior court of his residence, and upon the payment of the fee provided.

9-113. (4943) *Admission fee and its appropriation.* (Not applicable.)

9-114. (4944) *Justices of the Supreme Court authorized to make and amend rules.*—The Justices of the Supreme Court shall have power to pass such rules as may be necessary to carry the foregoing provisions for admission to the

bar into effect, and from time to time, amend such rules as occasions may require.

9-115. (4945) *Attorney's oath; form; to be taken in open court; entry on minutes.* (Not applicable.)

Acts of the General Assembly of the State of Georgia, of 1937.
p. 464 No. 439

Section 1. Be it enacted by the General Assembly of Georgia that Section 24-2628 of Chapter 24-26 of the Code of 1933, be and the same is hereby repealed and there is hereby substituted in lieu thereof a new section, to be numbered 24-2628 of Chapter 24-26 of the Code of 1933, to read as follows:

"Conventions of Judges to Recommend Rules of Practice to the General Assembly of Georgia. The several judges of the Superior Courts may convene at the seat of government once each year, at such times as they or a majority of them, may appoint, for the purpose of recommending to the General Assembly of Georgia the establishment of uniform rules of practice throughout the several circuits; which rules so recommended by the convention of judges shall not become operative and of force and effect until enacted into law by the General Assembly of Georgia."

FULTON SUPERIOR COURT.

This 10th day of July, 1944.

It appearing from a certificate issued from the Board of Examiners that Bernard M. Shotkin, who has presented to me a proper application for paying the usual fee of five dollars it is ordered that, upon his so doing and upon his filing with the Clerk of the Superior Court of Fulton County it being the County of the applicant's residence, his original application, the certificate of attorneys accompanying same, the oath made in connection with his examination, and the

certificate from the Board of Examiners in which said application is referred to by the number 201, said Clerk do issue to him a license, in proper form, authorizing him to plead and practice law in all the Courts of this State, except the Supreme Court and Court of Appeals of Georgia. It is further ordered that all the papers herein directed to be filed with said Clerk; and also this order and the oath as attorney which said applicant is thereby required to take, be entered upon the minutes of the Superior Court of said County and subscribed by the applicant. Said oath to be administered and attested by said Clerk.

PAUL S. ETHERIDGE, Judge Superior Court, Atlanta Circuit.

I, Bernard M. Shotkin, swear that I will justly and uprightly demean myself, according to the laws as an attorney, counselor, and solicitor, and that I will support and defend the Constitution of the United States and the Constitution of the State of Georgia.

So help me God.

Sworn to and subscribed before me, this the 10th day of July, 1944.

BERNARD M. SHOTKIN.
C. M. PASCHAL, Deputy Clerk, Superior Court.

STATE OF GEORGIA.

At a Superior Court Holden in and for the County of Fulton, July Term, 1944.

Know All Men By These Presents, That at the Present Sitting of This Court, Bernard M. Shotkin Made his application to plead and Practice in the several Courts of Law and Equity in this State, and presented in connection therewith a Certificate from the State Board of Bar Examiners of the State of Georgia.

Whereupon, the said Bernard M. Shotkin is admitted by the Court to all the privileges of an Attorney, Solicitor and Counselor in the several Courts of Law and Equity in

this State, except the Supreme Court of Georgia and the Court of Appeals of Georgia.

In Testimony Whereof, The presiding Judge has hereunto set his hand with the Seal of the Court annexed, this July 10, 1944.

PAUL S. ETHERIDGE, Judge Superior Court, Atlanta Circuit.
J. W. SIMMONS, Clerk, Superior Court.

Office of Clerk of Fulton Superior Court

Received of Bernard M. Shotkin Payment of Items Listed Below:

Case No.	Plaintiff	vs.	Defendant	Clerk's Cost	Sheriff's Cost	Deposit	Miscel	Total

For Fees Admission to Bar

$5.00

Atlanta, Ga., July 10, 1944 C. M. PASCHAL
Deputy Clerk

Original Special State Tax No. 5405

Not Transferrable

1944 Atlanta, Ga.

$7.50

Received of Bernard M. Shotkin

Seven & 50/100 — — —Dollars

For Tax as Lawyer

At No. 210 Peachtree St NW Street

Which Authorizes Said Business To December 31, 1944

T. E. SUTTLES,
Tax Collector Fulton County.
By SHIRLEY

Keep Posted Conspicuously In
Place of Business

I, Bernard M. Shotkin, the plaintiff in error in the above stated case, do hereby certify that I have this day served the foregoing petition and Brief for a Writ of Certiorari upon the defendants, by depositing in the U. S. Mails, in a properly stamped envelope, a copy thereof, addressed to A. Andrews, Esq., Solicitor General, Fulton County Court House, Atlanta, Georgia, of attorneys for defendants in error, attorneys of record for defendants in error, at their post office address, this 10th day of June, 1946.

BERNARD M. SHOTKIN, Pro Se.
1356 Newton St., Denver 4, Colo.